

238317



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re

COMBE FILL CORPORATION,

Debtor.

: Case No. 81 B 12024 (BRL)

: NOTICE OF HEARING ON
: TRUSTEE'S SECOND APPLICATION
: TO EXPUNGE, RECLASSIFY OR
: SUBORDINATE CLAIMS

-----x
PLEASE TAKE NOTICE that a hearing will be held before the Honorable Burton R. Lifland, Bankruptcy Judge, in Room 234 of the United States Courthouse, Foley Square, New York, New York, on the 29th day of April, 1986, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, on the Trustee's Second Application to Expunge, Reclassify or Subordinate Claims.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the application must be filed with the Clerk of the Bankruptcy Court and the undersigned no later than April 24, 1986.

Dated: New York, New York
March 27, 1986

BRUCE D. SCHERLING, P.C.
Attorneys for Trustee
6 East 45th Street
New York, New York 10017
(212) 972-8100

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re

COMBE FILL CORPORATION,

Debtor.

Case No. 81 B 12027 (BRL)

:
: SECOND APPLICATION TO EXPUNGE,
: RECLASSIFY, OR SUBORDINATE
: CLAIMS
:
:
-----X

TO THE HONORABLE BURTON R. LIFLAND, BANKRUPTCY JUDGE:

Bruce D. Scherling, Trustee of the Estate of Combe Fill Corporation, Debtor ("Applicant"), by his attorneys, Bruce D. Scherling, P.C., as and for his objections to claims, respectfully sets forth and alleges:

1. On October 19, 1981, Combe Fill Corporation (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York. Applicant was appointed Interim Trustee on October 19, 1982, became Trustee on December 2, 1981, pursuant to 11 U.S.C. 702(d), qualified and currently serves in that capacity.

2. This application is submitted in support of the Trustee's second motion to expunge, reduce or reclassify certain claims filed in the above-captioned proceeding.

3. Claims sought to be expunged, reduced or re-

classified by applicant are set forth below in three schedules. Each schedule is followed by a more detailed basis for the Trustee's recommendations.

ADMINISTRATIVE CLAIMS TO
BE EXPUNGED

<u>CLAIMANT</u>	<u>PROOF OF CLAIM NO.</u>	<u>AMOUNT</u>	<u>STATED BASIS</u>	<u>BASIS OF TRUSTEE'S OBJECTION</u>
United States		317,409	Reimbursement for response costs under CERCLA	Not properly allowable administrative claim; duplicate claim for same CERCLA expenses compromised by NJDEP pursuant to 1/17/84 Court Order.
Department of Finance of The City of New York Bankruptcy Section Room 803, 139 Centre Street, New York, N.Y. 10013	13	1,800	New York City Commercial Rent or Occupancy Tax and New York City General Corporation Tax	502(b)(1) Debtor did not maintain an office in New York City; Debtor did not transact any business in New York City.

United States Environmental Protection Agency

4. In January, 1986, the United States filed an administrative claim with the Trustee for reimbursement of \$317,409 representing funds advanced to the New Jersey Department of Environmental Protection ("NJDEP") by the United States En-

vironmental Protection Agency ("EPA") pursuant to their cooperative agreement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). The Trustee objects to the EPA claims. The EPA expenditures have not in any way served to preserve the estate, nor have they in any way conferred any benefit on the estate or its creditors. Moreover, the EPA claim is in effect a duplicate claim to that filed by the NJDEP for remedial investigation and feasibility closure costs. The NJDEP claim was settled pursuant to Court order entered January 23, 1984, for \$50,000, which has been paid by the Trustee to the NJDEP. The joint CERCLA agreement required the NJDEP to give the EPA thirty (30) days' notice in writing of the proposed settlement of any claim against any third party for reimbursement of monies expended by the EPA or the State for response activity at the debtor sites. The EPA, however, did not appear in the case until May of 1985, when the Trustee moved to abandon the land fills. The EPA is thus barred and estopped from reasserting the CERCLA claims previously settled by the NJDEP.

The City of New York

5. Claimant New York City seeks arrears for both the New York City Commercial Rent or Occupancy Tax and the New York City General Corporation Tax. Said claim has no factual or legal basis as the Debtor neither maintained an office in New York City nor transacted any business in New York City. Pursuant to Section 502(b)(1) of the Bankruptcy Code, the claim is unenforceable against the Debtor and Applicant recommends that said claim be expunged.

SECURED CLAIMS TO BE RECLASSIFIED AS
UNSECURED CLAIMS

<u>CLAIMANT</u>	<u>PROOF OF CLAIM NO.</u>	<u>CLAIM AMOUNT</u>	<u>STATED BASIS</u>	<u>BASIS OF TRUSTEE'S OBJECTION</u>
Wehran Engi- neering Corp. 200 Route 17 South, Rahway, Bergen County, New Jersey 07430	4	\$3,476.54	Professional services rendered to Morris County Landfill, Inc.; liability assumed by Debtor	362(a) Post-Petition Judgment
Charles A. Wolfe, Route 1, Climax Springs, Missouri 65324	9	30,000.00	Balance due on mortgage held by claimant on Combe Fill North	506(a) Combe Fill North has no appreciable value; claim is secured only to extent of value of creditor's collateral

Wehran Engineering Corp.

6. Claimant, a professional engineering corporation, rendered professional services to Morris County Landfill, Inc. ("Morris County"), a sanitary landfill that was the previous owner and operation of the Combe Fill North site. Thereafter, the Debtor allegedly assumed liability for the prior rendering of claimant's professional services to Morris County. In knowing violation of the 11 U.S.C. 362(a) automatic stay, claimant obtained a post-petition judgment in the Superior Court of New Jersey and thereby asserts his claim to be secured. Applicant recommends that said claim be reclassified as unsecured.

Charles A. Wolfe

7. Claimant, holder of a mortgage on Combe Fill North recorded December 3, 1970, has filed a proof of claim for \$30,000. Said figure represents the balance due under the mortgage. Pursuant to 11 U.S.C. 506(a), the value of a secured claim cannot exceed the value of the estate's interest in the property subject to the security interest. If the property has no value to the estate, the secured claim is similarly without value. Combe Fill North cannot be utilized for any viable purpose. No income can be generated from the operation of the site; nor is the property saleable. Consequently, as the site has no value to either the estate or to any other entity, Applicant recommends that the secured claim of Mr. Wolfe is without value and therefore should be reclassified as unsecured in accordance with U.S.C. 506(a).

SCHEDULE I

UNSECURED CLAIMS TO BE EXPUNGED
OR SUBORDINATED

<u>CLAIMANT</u>	<u>PROOF OF CLAIM NO.</u>	<u>CLAIM AMOUNT</u>	<u>STATED BASIS OF CLAIM</u>	<u>BASIS OF TRUSTEE'S OBJECTION</u>
John Rusman 12 Bellview Place, Plaisades Park, New Jersey 07650	10	\$2,355.00	Highest bid on equipment of Debtor at auction	502(b)(1) announced condi- tion of sale by auction--all sales subject to approval of Trustee.

<u>CLAIMANT</u>	<u>PROOF OF CLAIM NO.</u>	<u>CLAIM AMOUNT</u>	<u>STATED BASIS OF CLAIM</u>	<u>BASIS OF TRUSTEE'S OBJECTION</u>
Arthur M. and Carrie M. Tingue c/o Harmon H. Lookhoff, Esq., 222 Stelle Avenue Plainfield, N.J. 07060	15	\$100,000	Damage to real property and diminution of property value	Not creditor under 101(9) with claim under 101(4) which can be enforced.
John C. and Joseph B. Filiberto c/o Ben H. Becker, Esq.	19	Contin- gent and unliqui- dated	Indemnification Agreement with Debtor	Not creditor under 101(9) with claim under 101(4) which can be fixed or esti- mated; claim subject to equitable sub- ordination

John Rusman

8. Claimant bid for certain radio equipment of the Debtor at the auction conducted by Henry A. Leonard & Co., Inc. An announced condition of sale was that all bids were subject to both acceptance by Trustee and confirmation by the Bankruptcy Court. Prior to the Trustee's acceptance of claimant's bid, the Trustee was informed that the equipment which was the subject of claimant's bid was leased by the Debtor. The equipment was thereafter repossessed by the lessor. Thereafter, Mr. Rusman filed a claim based on the difference between the amount of his bid and the replacement value of the equipment. As Mr. Rusman's

bid was never accepted by the Trustee nor confirmed by the Court, there is no basis for this claim. Applicant accordingly recommends that the claim be expunged pursuant to 11 U.S.C. 502(b)(1).

Arthur and Carrie Tingue

9. Claimants seek \$100,000.00 for "physical damages to real property and for diminution of property value due to pollution caused by Debtor. Claimants do not possess a claim cognizable under law which would give rise to a right to payment under 101(4). Accordingly, Applicant recommends that this claim be expunged.

John C. and Joseph B. Filiberto

10. Claimants were the owners of Morris County Landfill, Inc. ("Morris County") and Chester Hills, Inc. ("Chester Hills"), which were engaged in business as sanitary landfills at the sites currently designated as Combe Fill North and Combe Fill South. Claimants assert that the estate may be liable to indemnify claimants up to \$200,000 should they be found liable in a suit brought by a third-party pertaining to the sellers' operation of the landfills. The Filiberto's do not possess a right to payment giving rise to a claim under 101(4). Moreover, any indemnification claim arising because of claimant's liabilities for violation of environmental laws would be subject to equitable subordination. Applicant therefore recommends that this claim be expunged or, in the alternative, be equitably subordinated to all other allowed claims.

11. No prior application for the relief sought herein has been made to this or any other court.

WHEREFORE, applicant Trustee respectfully prays for an Order expunging, reclassifying or equitably subordinating the claims as set forth in this application and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
March 27, 1986

BRUCE D. SCHERLING, P.C.
Attorneys for the Trustee

By KS/
A Member of the Firm
6 East 45th Street
New York, New York 10017
(212) 972-8100

of Counsel
Bruce D. Scherling
Kenneth J. Davidson